

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

LUMUMBA EARLE, individually and
as the Personal Representative of the
ESTATE of ANNIE EARLE, deceased,

Plaintiff,

v.

Civil Action: 3:14-29536

CITY OF HUNTINGTON, d/b/a CITY OF
HUNTINGTON POLICE DEPARTMENT,
a municipal corporation; JOSH NIELD,
individually and in his official capacity;
ST. MARY'S MEDICAL CENTER, INC., d/b/a
ST. MARY'S MEDICAL CENTER,
TAMMY PEYTON, individually and in her official capacity,
TARA RAMSEY, individually and in her official capacity,
BOBBI ADAMS, individually and in her official capacity,
MELISSA BLAGG, individually and in her official capacity,
ANDREA HEATH, individually and in her official capacity,
CABELL COUNTY 911, CABELL COUNTY COMMISSION,
TED GRANT, individually and in his official capacity,
PATRICK WATKINS, individually and in his official capacity,

Defendants.

**MOTION TO EXCLUDE TESTIMONY THAT THE GRAND JURY
DID NOT INDICT NIELD FOR CRIMINAL CHARGES**

Now Comes Plaintiff Lumumba Earle, individually, and as the Personal Representative of the Estate of Annie Earle, Deceased, by and through counsel, Richard W. Weston, and moves the Court for entry of an Order excluding testimony that the Grand Jury did not Indict Nield for Criminal Charges, and states the following in support:

On September 22, 2014, the Cabell County, WV prosecuting attorney presented potential criminal charges against officer Neild for the death of Annie Earle to the grand jury. The grand

jury returned a "no true bill" or, in other words, refused to indict Nield on criminal charges. Plaintiff moves the Court to issue an order precluding the defense from mentioning that the grand jury did not indict Nield.

The Fourth Circuit has encountered almost identical facts and determined that evidence of a criminal dismissal or acquittal is not admissible in a civil trial. See *Rabon v. Great Southwest Fire Ins. Co.*, 818 F.2d 306, 309 (4th Cir. 1987). In *Rabon*, the plaintiff sued his insurance carrier for not paying for fire damage to his house. *Id.* He had previously escaped criminal prosecution for the arson of his house. *Id.* Plaintiff introduced evidence about his past criminal case being dismissed during the civil trial. *Id.* The court the evidence was properly excluded for two reasons. First, it invades the province of the jury and is "highly prejudicial." *Id.* Second, the criteria is different in a criminal case and civil trial. *Id.*

Wherefore, Plaintiff requests that any mention of the Grand Jury be precluded and for any other relief deemed proper by the Court.

Lumumba Earle,
An Individual,

By Counsel: /s/Richard W. Weston
Richard W. Weston (WVSB # 9734)
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Defendants.

CERTIFICATE OF SERVICE

I, Richard W. Weston, do hereby certify that on this 14th day of July 2017, I electronically
filed the foregoing “**MOTION TO EXCLUDE TESTIMONY THAT THE GRAND JURY
DID NOT INDICT NIELD FOR CRIMINAL CHARGES**,” with the court using the CM/ECF
system which will send notification of such filing to the below counsel of record:

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